

ENVIRONMENTAL QUALITY COMMISSION

Meeting Minutes July 22, 1999 Public Meeting

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The Kentucky Environmental Quality Commission (EQC) held a public meeting on July 22, 1999 at 1:00 p.m. in Room 111 at the Capitol Annex Building, Frankfort, Kentucky. Commissioners present were Vice-Chair Betsy Bennett, Patty Wallace, Gary Revlett, Serena Williams, and Bob Riddle. EQC staff present was Leslie Cole, Scott Richards, Erik Siegel, and Frances Kirchhoff. There were approximately 25 people in attendance.

EQC Vice-Chair Betsy Bennett called the meeting to order at 1:00 p.m. and introduced EQC's newest commissioner, Serena Williams. Ms. Williams is replacing Harold Benson whose term expired. Ms. Bennett also congratulated Bob Riddle on his reappointment to the Commission for another 4 years.

Gary Revlett made a motion to approve the minutes of the March 25, 1999 meeting and Bob Riddle seconded the motion. The motion passed on voice vote.

Vice-Chair Betsy Bennett introduced Jim Villines, Department of Surface

Mining, to review a proposed coal mining regulation. The Surface Mining regulation incorporate a new bond form for federal lands and revise the nonfederal land bond form. Revisions to the nonfederal land form include deleting a requirement to identify the nearest community and to also delete a requirement that an out-of-state surety company have the bond signed by a Kentucky resident agency which was previously required under state law and has since been repealed.

After discussion, Bob Riddle made a motion to approve the surface mining regulation and Patty Wallace seconded the motion. By voice vote the Commission recommended approval of:

405 KAR 10:010?Incorporation by Reference of Performance Bond Forms.

Vice-Chair Bennett next introduced Dr. Bill Martin, Chair of the Heritage Land Conservation Fund board and Barbara Pauley, Counsel to the Board. The Kentucky Heritage Land Conservation Fund was established by the 1994 Kentucky Legislature to provide funding for:

1. Natural areas that possess unique features such as habitat for rare and endangered species;
2. Areas important to migratory birds;
3. Areas that perform important natural functions that are subject to alteration or loss; and
4. Areas to be preserved in a natural state for public use, outdoor recreation and education.

Funding for the acquisition of land comes from the state's portion of the unmined mineral tax, environmental fines, and the purchase of Kentucky's nature license plate.

Dr. Martin gave a status report on the Heritage Land Conservation Fund. Some highlights from his remarks were:

- Total receipts for Fiscal Year 1998 were \$3,534,389 (This figure is a little higher than usual because it represents the state's portion for two years income from the unmined mineral tax.)
- Requests for funds are much greater than money available.
- As of April 1999, 7,934 acres of property in 19 counties have been purchased.
- As of April 1999, 54 projects in 29 counties have been approved.
- In accordance with KRS 132.020 Section 9, \$400,000 was transferred to the Kentucky Coal Marketing and Export Council from the fund.
- In accordance with KRS 224.10-250, \$150,000 was transferred to the Kentucky Environmental Education Council from the fund.

Dr. Martin next reviewed a set of proposed amendments to the Heritage Fund regulations that would refine the regulations as well as reduce some unnecessary reporting requirements on fund recipients. After discussion, Gary Revlett made a motion to approve the Heritage Fund regulations and Serena Williams seconded the motion. By voice vote the Commission recommended approval of:

418 KAR 1:020 Administrative procedures of the board

418 KAR 1:030 State agency projects

418 KAR 1:040 Competitive grants

418 KAR 1:050 Procedures for acquisition of land

418 KAR 1:060 Management

418 KAR 1:070 Remedies

Vice-Chair Bennett next introduced Terry Anderson, Division of Water. Mr. Anderson reviewed the proposed amendments to the water quality regulations. The amendments are in response to the Division's triennial review of its water quality standards as required under federal law. The proposed

water quality standard amendments include changes to use designations of selected streams, changes to mixing zone requirements, revisions to zones of initial dilution, and implementation of the antidegradation.

After discussion, it was moved by Gary Revlett and seconded by Bob Riddle to table EQC action on the proposed water quality regulations until after the Division holds its public hearing on the regulations. This will provide EQC with an opportunity to review comments and assess the regulations more fully.

Vice-Chair Bennett next introduced Ron Gruzesky, Division of Waste Management to review two proposed regulations concerning permit-by-rules and one-acre construction and demolition landfills. After discussion, it was moved by Serena Williams to approve the waste regulations and seconded by Patty Wallace. By voice vote the Commission recommended approval of:

401 KAR 47:110 Registered permit by rule

401 KAR 48:320 Operating requirements for less than one acre construction/demolition debris landfills.

The next agenda topic was an update on the Lands Unsuitable for Mining Petition for Black Mountain and the recently approved settlement regarding this petition. Vice-Chair Bennett introduced Mike Haines, Office of Legal Services. Mr. Haines gave the history and an update of the series of negotiations concerning Black Mountain. The settlement came about when Kentuckians for the Commonwealth filed a petition to have a portion of Black Mountain declared unsuitable for mining. The petition alleged that mining Black Mountain would destroy its esthetic and historic value, damage its natural ecosystem and cause a natural land hazard.

Mr. Haines provided a summary of the settlement as follows:

- December 1998 - The Lands Unsuitable for Mining Petition was filed.
- April 10, 1999 - Outline Agreement was issued and was encouraged by Gov. Patton.
- April 19, 1999 - all parties entered into a letter of agreement.
- Timber purchase area is generally above 3800 feet (timber rights to be purchased)
- Timber Conservation easement area which is the entire petition area excepting from it the timber purchase area.
- A mineable area is set aside in the Letter of Agreement that will allow certain underground and surface mining and operations between 3032 feet elevations.

Other parts are subject to the surface impact of underground mining (bench house, subsidence rights).

- Under the letter of agreement the Lands Unsuitable for Mining petition will have been dispensed with if the petitioners could have reached agreement on mining conditions on two permits held by Jercol mining. That was done on May 3 after lengthy conference calls and meetings.
- Other facets of the 4/19 agreement is access agreements and conservation easements that will be granted to the Commonwealth by the timber and mineral holders.
- May 3, 1999 an agreement was reached. Drafts of offers were to be accepted by May 18, but were not received until June 30 because of reservations raised by the Cabinet. The companies, the petitioners and the Cabinet all worked together to work out the details.
- On June 30, 1999 the Cabinet received 3 offers to sell timber rights. The offers are open until December 31, 1999. They are for the total price of \$2,067,800. The cabinet has received 3 offers to sell coal. The offers are open until 10/19/99 (but can be extended to 12/31/99 if the amendment #2 of the 5/3 agreement is accepted and the permit issued - the total price on the coal offer is \$5,680,959.
- The access agreements are still in negotiations.
- The Lands Unsuitable for Mining petition was officially denied with the conditions agreed to on 5/3 permits and the conditions will become a part of the permits when issued. One permit was already issued and was not subject to the Lands Unsuitable for Mining Petition but they came to the table with it and it is a part of the offer.
- The Finance Cabinet is currently seeking bids from an appraiser for the coal and timber rights. The KY Heritage Land Conservation Fund has agreed to pay up to \$200,000 for the appraisals.

Questions followed the presentation. Much of the discussion centered on public access to Black Mountain. Under the agreement, access is granted to state officials for only biodiversity studies. It was noted that the state would purchase the coal and timber rights on 1,850 acres but not the surface rights. This is because there is concern regarding liability due to past underground coal mining operations and problems with subsidence. Therefore the public will not have access to the site.

The next agenda topic was a status report on Confined Animal Feeding Operations. Vice-Chair Bennett introduced Bruce Scott, Division of Water, and Steve Coleman, Division of Conservation to discuss Confined Animal Feeding Operations (CAFOs).

Mr. Scott highlighted seven areas where the state was working to address CAFOs.

- Agriculture Water Quality Act - this act requires the preparation of plans to protect water quality.

The board recently approved Best Management Practices (BMPs) for confined animal feeding operations (Mr. Scott deferred this discussion to Steve Coleman who will discuss the BMPs later in the program)

- Groundwater Protection Plans – Mr. Scott said the Division of Water has released a draft generic groundwater protection plan for confined animal feeding operations less than 10 acres. The document is out for public comment and is available from the Division of Water.
- CAFO inventory – Mr. Scott said the Division of Water was currently inventorying the number of CAFOs in the state.
- No discharge Permit - Mr. Scott mentioned that all CAFOs are required to register with the Division of Water to determine if there is a water discharge from the facility.
- Strategies of the EPA/USDA – Mr. Scott mentioned that the U.S. EPA has drafted a CAFO strategy to regulate these operations.
- Permits for Animal Feeding Operations (AFOs) – Mr. Scott indicated that the state was considering requiring KPDES permits for AFOs.
- Status of the swine CAFO regulations – Mr. Scott said the state-enacted regulations last year to address environmental problems associated with swine operations. These regulations were attached by a legislative committee, which means that they will expire at the end of the 2000 legislative session.

Ms. Bennett next introduced Steve Coleman, Director of the Division of Conservation. Mr. Coleman a brief history and update of the Kentucky Agriculture Water Quality act and the Best Management Practices required for CAFOs as follow:

- The Kentucky Agriculture Water Quality Plan was approved in October 1996.
- James E. Bickford, Secretary of the Natural Resources and Environmental Protection Cabinet addressed the Kentucky Agriculture Water Quality Authority to discuss problems in the poultry industry and to bring the Authority up to date. He stated there is a serious problem in Kentucky and that citizens are concerned, and asked the Authority to make recommendations as to what can be done to address present and future problems with the poultry situation in Kentucky.
- The request prompted a joint meeting of the Kentucky Agriculture Water Quality Authority's Livestock and Large Livestock Committees. Their basic recommendation was to strengthen the Best Management Practices (BMP) in two areas; the siting of poultry houses and facilities and land application of poultry waste by-products, and a nutrient management Best Management Practice.
- To accomplish this, two new Livestock BMPs were drafted: BMP #11—Nutrient Management, and BMP #17—Poultry Facility Siting and Land Application of On-Farm Generated Waste By-Products.

EQC Commissioners asked several questions following the presentation. Some commissioners expressed concern about the BMPs and how they would be enforced.

Concerned citizens in the audience next voiced concerns about the proliferation of chicken houses and the impacts to neighbors and the environment.

- Dan Witherspoon a Fulton County rural resident who earns a full-time living on the farm commented first. In the last 2 years, 14 Tyson Poultry houses have been built within a mile of his house and 2 more are to be built. The stench from these houses extends more than a mile away. The stench can be compared to that of dead animals lying in the hot sun for 5 days. If state and local officials had read the article in the Toulain Env. Law Journal, about the industry in Western Arkansas, things would be different here in Kentucky. These are industrial operations and not farms. He believes a moratorium should be placed on CAFOs immediately. He also said that the BMPS are grossly inadequate as far as the set backs and siting acreage.
- Chris Korrow of Cumberland County is an organic farmer. He said that 16 houses have been built across the river from his farm in White's Bottom. This is a 90-acre farm with 16 chicken houses. He expressed ensuring regulations are being complied with assurances that the farm following its nutrient plan. He also expressed concern about where they are taking their manure, how much they are spreading. He said that factory farms are putting the traditional farmer out of business. They have no place to put/spread manure. Farms are too small to spread all the manure. He also said that the BMP setback limits at too close to other property owners.
- Joe Nepi of Meade County said that the 75-foot BMP siting guidelines were insufficient. He said that air quality should be checked and you will find that within 80 feet is where most of the complaints come from. He said a chicken house was polluting his community's drinking water source – Doe Valley Lake. He too has concerns about enforcement of the clean water act. He is concerned that his neighbors are spreading too manure much on their land.
- Lee Dew of Owensboro described several problems encountered by those who see themselves as victims for living next to factory poultry farms. Mr. Dew spoke of the concerns of 5 individuals in 4 counties in Kentucky:
 1. Robert and Clara Frailey of McClaine County posted a sign in their yard which says, "It reeks," after a neighbor built chicken houses. Ms. Frailey stated that she has been threatened with legal action after complaining to the owner of the chicken house operation about the smell.
 2. Joe Rinney in Daviess County bought property on the banks of the Panther Creek with the intentions of building a retirement house, but neighbors bought property and began construction on 4 chicken houses. Due to building restrictions in the area, he pleaded his case to the former owner, but o no avail. Mr. Rinney has abandoned his idea of a retirement house and now has land valued much less that the price he paid for it.
 3. P.R. and Lisa Webster of Seebree in Webster County live close to 16 houses. They have removed their swimming pool because it is impossible to keep it clean of litter and feathers blowing into it. They complain of flies and stench and traffic and noise.
 4. Nora Cann of Seebree in Webster County lives surrounded by 25 houses. Her children cannot play outside and the family suffers from severe respiratory problems especially at

times when the birds are being moved. Their water is also polluted with ecoli. She has tried to get relief from local government, and has been threatened by Tyson with legal action if she continues to complain.

5. Ray and Carolyn Laythem live outside the Community of Beechmont in Mulhensburg County. Odor, dust from the road, and periodic infestation from rodents and mice have resulted after nearby chicken houses moved in. They like the others suffer from headaches, respiratory problems and general feeling of malaise. Their property tax assessment for this year was reduced by \$8,000.00—down about 20 percent of the assessed value of their property. And the assessor wrote on the tax bill the reduction was "because of problems with neighboring chicken houses."

Mr. Dew said he was constantly being asked questions for which we have no answers such as: What can be done about water pollution from CAFOs? What atmospheric pathogens are contained in dust from chicken houses? What can be done about air quality such as drivers hauling uncovered loads of manure? What can be done to enforce speed and weight limits on country roads? What can be done about mice, bugs and other pests that occur when chickens are being moved and houses are cleaned? What can be done to counteract the climate the fear that exists for those that speak out and are threatened with lawsuits and physical violence or worse. In closing, Mr. Dew summed it up by stating that these persons are all citizens of the Commonwealth of Kentucky with problems that cry out to be addressed by those whose positions it is to guard the rights of citizens to enjoy the fruits of their labor, the rights to their property, and the right to seek redress of their grievances.

- Hank Graddy, an environmental attorney and member of the Agriculture Water Quality Act board, said the poultry BMPs are insufficient, especially because they do not consider the number of houses built. He said 16 houses are treated the same as two houses. He said he voiced this concern to the Agriculture Water Authority but no changes were made. Since there is no known technology for odor problems and pest problems, the only solution is a matter of location. The failure to address this problem means that there is going to be increased ill will between the members of the farm community and folks who want to go into the poultry. He said the BMP setbacks are woefully inadequate -- nobody should have to live 75 feet from that type of operation. Mr. Graddy also criticized the Agriculture Water Quality Authority for not addressing integrator liability. He said the lessons we learned from Maryland, Arkansas and others is that is a recipe for disaster because it imposes on the most financially stretched part of the system the ultimate environmental responsibility and it relieves the entity that is best positioned to finance a solution to the problem from any responsibility. Mr. Graddy noted that Kentucky is one of a few states in the nation that have assigned to the owners of the swine some shared responsibility with the owner of the farm operators. Kentucky does have pieces of integrator liability in its swine regulations and Kentucky should be commended for taking that step. But Kentucky has done nothing regarding integrated liability in the poultry industry. Mr. Graddy also mentioned that he believed that the Agriculture Water Quality Act had fallen short in the advising the public. The public has the right to know that a owner of chicken house has enough land to properly dispose of manure and that if he owns enough land, that he manages is litter right, he will not cause a

problem no same and proper no applications in the middle of the night.

Mr. Graddy asked several questions. Mr. Scott replied to the questions as follows:

Q. Should chicken houses be permitted under KPDES permits?

A. If the program is deemed to be the legal vehicle to take, I would agree that they would be subject to NPDES for CAFOs. We have not issued any NPDES permits for CAFOs in Kentucky as yet. That is something that we have been thinking about for sometime. I would caution everyone that it is not the panacea that some would like it to be. It does not address things like flies, traffic noise, and feathers. I understand the complaints but I can't resolve all those problems with the NPDES program. Which begs the issue that something larger and better may be needed.

Q. Is Kentucky participating in the EPA self audit program for pork producers?

A. Kentucky did not opt in for that program because we did not want to limit the ability to address problems through groundwater protection plans. The Agriculture Water Quality Act BMPs apply to animal operations of 15 acres or more. The groundwater protection plans apply to animal feeding operations less than ten acres. We don't have firm numbers of how many operations that would entail but it is likely to be a large number because you have a lot of prospective numbers that want to go into the poultry business who buy less than 10 acre tracts to put up a house or two. That is not uncommon.

Q. What are the results of the CAFO survey?

A. In 1987 there was approximately 2 million broilers produced in KY. Production capacity in Kentucky at the present time is roughly 230 million broilers that can be processed. As far as what has been located thus far, we have not looked at all the counties, but we have counted approximately 200 operations or so to date. A trend is that a third of those have 4 houses or more. A typical broiler operation might have 25 or 26 thousand broilers in a single house.

Mr. Scott made a few additional points. He mentioned that the NPDES program is not going to address all the issues and some of these problems are best addressed at the local level. Several counties have passed such ordinances and Mr. Scott said that this was an appropriate vehicle to address land use concerns. The other point Mr. Scott made was that any type of approach that the agency takes would likely have to come with the blessing of the Legislature. He emphasized that elected officials must be made aware of these problems since it is they who pass the laws in Kentucky and must ultimately resolve this problem.

Under other business meeting, it was suggested that the Commission commend Governor Patton and Secretary Bickford for their work concerning the Black Mountain negotiated settlement. It was moved by Betsy Bennett, seconded by Gary Revlett and passed by voice vote that a letter be sent to the Governor and Secretary Bickford commending their actions.

Regarding the people's concerns regarding CAFOs, it was motioned by Betsy Bennett and seconded by Patty Wallace to have staff look into the problem of poultry CAFOs and develop some recommendations for EQC to consider. The motion carried unanimously by voice vote. It was also suggested that EQC staff follow up on Mr. Nepi's concern about Doe Valley Lake and problems with fecal coliform pollution due to nearby chicken houses.

Ms. Cole next reviewed the EQC budget and the EQC onsite sewage project. The next EQC meeting was announced and will be held August 19 in Hancock County. With no further business the meeting adjourned at 4:30 p.m.

Signed

Date